

73-3-5.6 Applications to appropriate or permanently change a small amount of water -- Proof of appropriation or change.

- (1) As used in this section:
 - (a) "Application" means an application to:
 - (i) appropriate a small amount of water; or
 - (ii) permanently change a small amount of water.
 - (b) "Livestock water right" means a right for:
 - (i) livestock to consume water:
 - (A) directly from the water source; or
 - (B) from an impoundment into which the water is diverted; and
 - (ii) associated uses of water related to the raising and care of livestock.
 - (c) "Proof" means proof of:
 - (i) appropriation; or
 - (ii) permanent change.
 - (d) "Small amount of water" means the amount of water necessary to meet the requirements of:
 - (i) one residence;
 - (ii) 1/4 acre of irrigable land; and
 - (iii) a livestock watering right for:
 - (A) 10 cattle; or
 - (B) the equivalent amount of water of Subsection (1)(d)(iii)(A) for livestock other than cattle.
- (2) The state engineer may approve an application if:
 - (a) the state engineer undertakes a thorough investigation of the application;
 - (b) notice is provided in accordance with Subsection (3);
 - (c) the application complies with the state engineer's regional policies and restrictions and Section 73-3-3 or 73-3-8, as applicable; and
 - (d) the application does not conflict with a political subdivision's ordinance:
 - (i) for planning, zoning, or subdivision regulation; or
 - (ii) under Section 10-8-15.
- (3)
 - (a) Advertising of an application specified in Subsection (2) is at the discretion of the state engineer.
 - (b) If the state engineer finds that the uses proposed by the application may impair other rights, before approving the application, the state engineer shall give notice of the application according to Section 73-3-6.
- (4) An applicant receiving approval under this section is responsible for the time limit for construction and submitting proof as required by Subsection (6).
- (5) Sixty days before the end of the time limit for construction, the state engineer shall notify the applicant by mail when proof is due.
- (6)
 - (a) Notwithstanding Section 73-3-16, the state engineer shall issue a certificate under Section 73-3-17 if an applicant files an affidavit, on a form provided by the state engineer, as proof.
 - (b) The affidavit shall:
 - (i) specify the amount of:
 - (A) irrigated land; and
 - (B) livestock watered; and
 - (ii) declare the residence is constructed and occupied.

- (c) The form provided by the state engineer under Subsection (6)(a) may require the information the state engineer determines is necessary to maintain accurate records regarding the point of diversion and place of use.
- (7) If an applicant does not file the proof required by Subsection (6) by the day on which the time limit for construction ends, the application lapses under Section 73-3-18.
- (8)
 - (a) An applicant whose application lapses may file a request with the state engineer to reinstate the application, if the applicant demonstrates that the applicant or the applicant's predecessor in interest:
 - (i) constructed and occupied a residence within the time limit for construction; and
 - (ii) beneficially uses the water.
 - (b) If an applicant meets the requirements of Subsection (8)(a) and submits an affidavit as provided by Subsection (6), the state engineer shall issue a certificate:
 - (i) for the amount of water actually in use as described in the affidavit; and
 - (ii) with a priority date of the day on which the applicant files the request for reinstatement of the application.

Amended by Chapter 367, 2009 General Session